

I offer the following comment regarding the RCRA Waste Sampling Draft Technical Guidance. Section 2.2.4 of this guidance indicates that a single sample result above the regulatory standard is sufficient to determine that a waste is hazardous. This interpretation, if implemented, is likely to greatly expand the universe of material regulated as hazardous waste, and would do so without the appropriate formal rulemaking effort.

The current version of Chapter Nine of SW-846 indicates that hazardous waste

determinations may be based upon a statistical evaluation of sampling results using an 80% two-tailed confidence interval. In using the statistical approach, it is very possible that an individual sample result could exceed a regulatory standard, but still have the mean of the upper limit of the confidence interval fall below the standard. In such an instance, the Chapter Nine discussion concludes that the waste is not hazardous. An example presented in Chapter Nine specifically illustrates this point: sludge from a hypothetical lagoon is sampled with results showing that at least one sample contains barium above the regulatory threshold but, since the mean of the upper limit of the confidence limit is below the regulatory threshold, it is concluded that barium is not present in the sludge at a hazardous level.

Many in the regulated community have long used SW-846 as a basis for making hazardous waste determinations, relying upon the statistical approaches embodied in Chapter Nine. The discussion in the RCRA Waste Sampling Draft Technical Guidance would overturn the longstanding statistical approach established by the EPA, adopted by many states, and used with confidence by the regulated community. If, as the guidance indicates, a single sample result is sufficient to determine that a waste is hazardous in an enforcement context, then a generator takes on significant liability if he concludes the waste is not hazardous based on the statistical approach presented in the current version of SW-846. In order to avoid this liability, it will be necessary for generators to begin designating many waste streams as hazardous that were previously (and legitimately based on current SW-846 interpretation) considered not hazardous.

In effect, the language in the RCRA Waste Sampling Draft Technical Guidance would cause regulation of waste streams currently not subject to hazardous waste standards. This is an inappropriate consequence from issuance of a guidance manual. Instead, an increase in the amount of material regulated as hazardous waste should only be done through formal rulemaking, and should

include a regulatory impact analysis of the effect on the regulated community. The EPA is strongly urged not to issue the RCRA Waste Sampling Draft Technical Guidance with the single-sample determination language

unless and until appropriate rulemaking efforts have been completed.

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